



CITY OF SAINT PAUL  
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**Date:** February 15, 2011  
**To:** Neighborhood Planning Committee  
**From:** Patricia James *Patricia James* [patricia.james@ci.stpaul.mn.us](mailto:patricia.james@ci.stpaul.mn.us) 651.266.6639  
**RE:** Tobacco Shop Zoning Study

### Introduction

On May 12, 2010, the City Council adopted Resolution 10-496, enacting a moratorium on the issuance of zoning permits or approvals (including site plans, lot splits, or plats), building permits, and occupancy certificates for any tobacco shop, and directed the Planning Commission to study the present zoning regulation of tobacco shops and, if needed, recommend amendments to the present zoning regulations and official controls.

On August 11, 2010, follow-up interim ordinance 10-777 was adopted. It specifically referenced the growing number of businesses, called "hookah lounges," "hookah bars," "hookah cafés," etc. that are being licensed as tobacco shops and offer "sampling" of tobacco products smoked in hookah pipes. The ordinance also noted that using a water pipe does not lessen the adverse health effects of smoking tobacco products.

### Regulatory Background

The Minnesota Clean Indoor Air Act was adopted in 1975. It prohibited smoking in many indoor places. In 2007, the Freedom to Breathe Act expanded the previous act in order to more fully protect employees and the public from the health hazards of secondhand smoke, and it extended the smoking prohibition to nearly all indoor places (MN. Statutes Sec. 144.411-144.417).

MN Statutes Sec. 144.4167, Subd. 4 allows an exemption for "sampling" of tobacco products in tobacco products shops. While a definition of "tobacco products shop" is provided, the term "sampling" is not defined in the statute. However, it does permit local units of government to adopt more stringent regulations regarding exposure to secondhand smoke and to regulate outdoor smoking as well.

Sec. 144.4167 PERMITTED SMOKING. Subd. 4. Tobacco products shop states:  
Sections 144.414 to 144.417 do not prohibit the lighting of tobacco in a tobacco products shop by a customer or potential customer for the specific purpose of sampling tobacco products.  
*For the purposes of this subdivision, a tobacco products shop is a retail establishment with an entrance door opening directly to the outside that derives more than 90 percent of its gross revenue from the sale of loose tobacco, plants, or herbs and cigars, cigarettes, pipes, and other smoking devices for burning tobacco and related smoking accessories and in which the sale of other products is merely incidental. "Tobacco products shop" does not include a*

*tobacco department or section of any individual business establishment with any type of liquor, food, or restaurant license. [Emphasis added]*

Saint Paul's zoning code permits a "tobacco shop" as a retail sales and service use in all mixed use, commercial and industrial districts except the OS Office-Service and the TN1 Traditional Neighborhood districts. The code does not include a land use definition of a "tobacco shop," nor are there any standards and criteria for the use.

Tobacco shops are also required to obtain a City tobacco sales license and are regulated under Chapter 324. In most cases, businesses with a retail tobacco sales license either have another primary purpose and sale of tobacco products and related goods is accessory to the principal use, or the sales are for purely off-premises consumption.

Amending the zoning code would enable the City of Saint Paul to differentiate between businesses whose primary purpose is to sell tobacco and tobacco-related products and that may offer product sampling and the majority of businesses that sell tobacco and tobacco-related products as only a portion of their more general commercial/retail business (e.g. grocery stores, convenience stores, bars and restaurants, etc.). The Department of Safety and Inspections is also reviewing the license regulations relative to the operation of these businesses and will be proposing amendments to Chapter 324 as needed.

#### **Staff Recommendation**

1. Amend Chapter 65 to include a definition of *tobacco products shop* consistent with state statute and to distinguish these shops from other businesses where tobacco sales are not the primary use.
2. Establish standards and conditions for the use that
  - a. require a minimum distance between tobacco products shops, and
  - b. provide for planning commission review of larger facilities in the BC and TN2 zoning districts, consistent with the requirement for other types of uses.

#### **Proposed Zoning Text Amendments**

##### Sec. 65.535. Tobacco products shop.

A retail establishment with a principal entrance door opening directly to the outside onto a public right-of-way that derives more than 90 percent of its gross revenue from the sale of loose tobacco, plants, or herbs and cigars, cigarettes, pipes, and other smoking devices for burning tobacco and related smoking accessories and in which the sale of other products is merely incidental. "Tobacco products shop" does not include a tobacco department or section of any individual business establishment with any type of liquor, food, or restaurant license. [The new definition is the same as that in Minnesota Statutes and will maintain consistency with state and local regulation. The reference to "public right-of-way" clarifies that the principal entrance cannot be onto private property.]

##### Standards and conditions:

- (a) No tobacco products shop shall be located within ½ mile (2,640 ft.) of another tobacco products shop.

- (b) In the BC community business (converted) and TN2 traditional neighborhood districts, a conditional use permit is required for tobacco products shops with a floor area greater than 2,500 square feet.

[These uses are called out as potential exceptions to the general indoor smoking ban in Minnesota and are therefore likely to draw customers from a larger area than other types of neighborhood-oriented businesses. Establishing a distance between businesses that have the option to permit sampling will help to ensure the continuance of a variety of businesses in commercial areas without unduly limiting the number of these businesses. Currently there are 12 businesses that Licensing staff in the Department of Safety and Inspections have identified as meeting the proposed definition. Only two of these businesses would become nonconforming with the half mile distance requirement. As legal nonconforming uses, these businesses could remain at their current locations indefinitely.]

Requiring a conditional use permit for larger tobacco products shops is consistent with the intent of the BC district to “permit the operation of businesses which do not generate large amounts of traffic...” and the TN2 district to “foster compact, pedestrian-oriented commercial...development” and encourage a variety of uses. No existing business would be affected by this requirement.]

Table 66.321. Principal Uses in Traditional Neighborhood Districts

Use	TN1	TN2	TN3	Development Standards
Tobacco <u>products</u> shop		<u>P/C</u>	P	✓ <input type="checkbox"/>

Table 66.421. Principal Uses in Business Districts

Use	OS	B1	BC	B2	B3	B4	B5	Development standards
Tobacco <u>products</u> shop		P	<u>P/C</u>	P	P	P	P	✓ <input type="checkbox"/>

Table 66.521. Principal Uses in Industrial Districts

Use	IR	I1	I2	I3	Development Standards
Tobacco <u>products</u> shop	P	P	P		✓

[These uses are called out as potential exceptions to the general indoor smoking ban in Minnesota and are therefore likely to draw customers from a larger area. Permitting them in commercial and industrial districts that are intended to draw from a larger area than the immediate neighborhood limits potential traffic impacts on the B1 district, which is intended to serve “the convenience shopping or service needs of persons residing in nearby residential areas.”]



# TOBACCO SHOP LOCATIONS

BUSINESS NAME	ADDRESS	ZONING
TOBACCO & BEYOND	898 ARCADE ST ST PAUL MN 55106	TN2
STOGIES ON GRAND	961 GRAND AVE ST PAUL MN 55105-3015	BC
GRAND HOOKAH	1826 GRAND AVE ST PAUL MN 55105-1403	B2
SMOKES R LESS	2111 HUDSON ROAD ST PAUL MN 55119-4406	B2
MARYLAND TOBACCO	1375 MARYLAND AVE E ST PAUL MN 55106-2862	TN2
GOLDEN LEAF ON W 7TH	277 7TH ST W ST PAUL MN 55102	TN2
PLAZA TOBACCO	2419 7TH ST W ST PAUL MN 55116-2839	B2
DISCOUNT TOBACCO	1704 SUBURBAN AVE ST PAUL MN 55106-6632	B2
CAPITOL TOBACCOS	152 UNIVERSITY AVE W ST PAUL MN 55103-2043	CAAPCJ
MIDWAY TOBACCO & MARKETPLACE	1418 UNIVERSITY AVE W ST PAUL MN 55104-4001	B2
MIDWAY TOBACCO SMOKES	1464-1/2 UNIVERSITY AVE W ST PAUL MN 55104-3901	B2
LOUNGE 280	2418 UNIVERSITY AVE W 2430 UNIVERSITY AVE W ST PAUL MN 55114-1706	B3 B3

